

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:10cr485
	.	
vs.	.	Alexandria, Virginia
	.	January 22, 2015
JEFFREY ALEXANDER STERLING,	.	1:25 p.m.
	.	
Defendant.	.	<u>EXCERPT OF P.M. SESSION</u>
	.	
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TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	JAMES L. TRUMP, AUSA DENNIS M. FITZPATRICK, AUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314 and ERIC G. OLSHAN, Deputy Chief Public Integrity Section of the Criminal Division United States Department of Justice 1400 New York Avenue, N.W. Suite 12100 Washington, D.C. 20005
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FOR THE DEFENDANT:	EDWARD B. MAC MAHON, JR., ESQ. Law Office of Edward B. MacMahon, Jr. 107 East Washington Street P.O. Box 25 Middleburg, VA 20118 and BARRY J. POLLACK, ESQ. MIA P. HAESSLY, ESQ. Miller & Chevalier Chartered 655 - 15th Street, N.W. Suite 900 Washington, D.C. 20005-5701
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES: (Cont'd.)

2 CLASSIFIED INFORMATION
3 SECURITY OFFICERS:

CHRISTINE E. GUNNING
MAURA PETERSON

4 ALSO PRESENT:

GERARD FRANCISCO
SA ASHLEY HUNT
JENNIFER MULLIN, ESQ.

6
7 OFFICIAL COURT REPORTER:

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1 A F T E R N O O N S E S S I O N

2 (Defendant present, Jury out.)

3 THE COURT: All right, before we bring in the jury,
4 again the ground rules are while the Court's instructing, no in
5 and out of the courtroom, so I assume that's going to be taken
6 care of.

7 We gave you over the lunch break, there are four jury
8 instructions that have been slightly changed, and there's a new
9 one. Let me take 11(a), the classification markings had been
10 submitted by the government, I think, earlier, but I needed
11 also -- and this comes from our court security people -- to
12 advise the jury as to how they must approach the three still
13 classified exhibits, so I want to know whether there's any
14 objection to the language. It's 11(a). It should be in the
15 small, independent package that each of you have, if there's
16 any objection to that additional language.

17 So what I've added there is, "Because Exhibits 142,
18 143, and 144 remain classified as Secret, you may not
19 communicate the contents of these exhibits to anyone after this
20 trial is concluded. You should draw no inference as to the
21 guilt or innocence of the defendant from the fact that you
22 cannot communicate anything about these exhibits."

23 Is there any objection to that?

24 MR. MAC MAHON: No objection from the defense, Your
25 Honor.

1 THE COURT: I assume --

2 MR. TRUMP: That's fine.

3 THE COURT: All right, good. All right, so that's
4 11(a) if you want to put it in your packet.

5 Then if you look at, we've made the modifications we
6 talked about to Exhibit -- to instruction page 24. We've added
7 the exhibit numbers 142 through 145. That's the 404(b)
8 evidence exhibit -- I'm sorry, instruction, and we in the last
9 paragraph struck out "or crimes." So "the defendant is not on
10 trial for any acts not alleged in the indictment," all right?

11 MR. MAC MAHON: Thank you, Your Honor.

12 THE COURT: No objection to that, correct?

13 Okay. Possession, which is 31, we have changed the
14 tense to the past tense in the paragraph for Counts 1, 4, and
15 6, so it says, "by a person who held an appropriate security
16 clearance and had a need to know at the time the person
17 acquired the classified information," and then we've added the
18 "namely, a letter related to Classified Program No. 1" in the
19 next paragraph.

20 Any problem with that new instruction?

21 MR. MAC MAHON: No, Your Honor.

22 THE COURT: All right? So make sure you replace that
23 in your packets.

24 And then the only change we made to 41, we had
25 intended to have the date so that the jury doesn't have to go

1 back and forth rummaging through the instructions, so we've
2 just added the dates that were alleged in that count. All
3 right, any problem with that? No?

4 MR. MAC MAHON: Not from the defense, Your Honor.

5 THE COURT: All right, then I believe we are about
6 ready to bring the jury in. Are there any other last-minute
7 matters? Were all the exhibits taken care of at the close of
8 business yesterday? Was there any issue with any of the
9 physical exhibits?

10 MR. FITZPATRICK: No, Your Honor.

11 THE COURT: I'm sorry?

12 MR. FITZPATRICK: No, Your Honor.

13 THE COURT: No? Mr. Olshan?

14 MR. OLSHAN: As a housekeeping matter --

15 THE COURT: Yes, sir.

16 MR. OLSHAN: -- Exhibit 176 was a stipulation.

17 It's the last one we moved in. The exhibit that goes
18 to the jury just needs to be executed by the parties.

19 THE COURT: Let's do that right now. So let me have
20 176 pulled out of the stack. Do you have them?

21 MR. OLSHAN: We don't have the official evidence
22 binder.

23 THE CLERK: No, I have it.

24 MR. OLSHAN: May I approach?

25 THE COURT: Yes. So you -- have you signed it? Has

1 anybody signed it?

2 MR. OLSHAN: I don't believe so.

3 THE COURT: All right. So just pull 176 out.

4 Mr. MacMahon, while that's being done, was there some
5 issue you had as well?

6 MR. MAC MAHON: No, Your Honor.

7 THE COURT: Okay.

8 MR. MAC MAHON: I'm just taking the chance to stand
9 up.

10 THE COURT: You can do that during, during the charge
11 if you want.

12 MR. MAC MAHON: I'll be fine, Your Honor. Thank you
13 very much.

14 THE COURT: I mean, frankly, you don't even have to
15 be here for the charge. You know what I'm going to say.

16 MR. MAC MAHON: I know, but I wouldn't do that, Your
17 Honor.

18 THE COURT: All right, that's fine.

19 MR. OLSHAN: One moment, Your Honor?

20 THE COURT: Yes, sir.

21 MR. OLSHAN: We need to grab a copy of that one.
22 It's just a stipulation. It shouldn't be an issue. If it's
23 easier to --

24 THE COURT: I'm sorry? You need a copy?

25 MR. OLSHAN: The formal exhibit binder does not have

1 a version of it, have the exhibit. If the defense has a copy,
2 we can just sign it.

3 MR. MAC MAHON: We'll see if we have one.

4 THE COURT: All right. Did you-all do your indexes
5 of the exhibits?

6 MR. OLSHAN: Yes.

7 THE COURT: You're looking over your shoulder,
8 Mr. Olshan. Is it in the courthouse -- courtroom?

9 MR. FRANCISCO: Yes.

10 THE COURT: We have it?

11 Did you show it to defense counsel? Is there any
12 objection to the form of the index? I usually have defense
13 counsel actually initial it just to make sure there's no
14 argument that there's something that was said in the index that
15 could be an issue.

16 All right, so 176 is fully endorsed now? It's all
17 set.

18 MR. OLSHAN: Thank you, Your Honor.

19 THE COURT: All right. And the -- again, the index,
20 no objections to the index? Are you still looking at that,
21 Mr. Pollack?

22 MR. POLLACK: Your Honor, if I can have just a
23 minute?

24 THE COURT: All right. And the defense list is so
25 short, I'm assuming there's no objection to -- we don't have a

1 defense index. Do you have one?

2 MS. HAESSLY: Yes, we have one, Your Honor.

3 THE COURT: All right. Hold on.

4 Ms. Copsey, would you go get that?

5 All right, any objection, Mr. Trump?

6 MR. TRUMP: No.

7 THE COURT: All right, that's fine. So the defense
8 list is in.

9 Well, I'll tell you what, I want to start charging
10 the jury. Mr. Pollack, you can be looking at that at the same
11 time. If there's an objection, we still haven't sent it in to
12 the jury, and we can correct that afterwards, all right?

13 MR. POLLACK: Yes. There are a couple of issues, but
14 we can take them up later.

15 THE COURT: All right. Mr. Wood, let's bring the
16 jury in.

17 (Jury present.)

18 THE COURT: Have a seat, ladies and gentlemen. Thank
19 you.

20 All right, now that you have heard all of the
21 evidence to be received in this trial and each of the arguments
22 of counsel, it becomes my duty to give you the final
23 instructions of the Court as to the law that is applicable to
24 this case and which will guide you in your decisions.

25 All of the instructions of law given to you by the

1 Court -- those given to you at the beginning of the trial,
2 those given to you during the trial, and these final
3 instructions -- must guide and govern your deliberations.

4 It is your duty as jurors to follow the law as stated
5 in all of the instructions of the Court and to apply these
6 rules of law to the facts as you find them from the evidence
7 received during the trial.

8 Counsel have quite properly referred to some of the
9 applicable rules of law to you in their closing arguments. If,
10 however, any difference appears to you between the law as
11 stated by counsel and that as stated by the Court in these
12 instructions, you are, of course, to be governed by the
13 instructions given to you by the Court.

14 You are not to single out any one instruction alone
15 as stating the law but must consider all of the instructions as
16 a whole in reaching your decisions.

17 Neither are you to be concerned with the wisdom of
18 any rule of law stated by the Court. Regardless of any opinion
19 you may have as to what the law ought to be, it would be a
20 violation of your sworn duty to base any part of your verdict
21 upon any other view or opinion of the law than that given in
22 these instructions of the Court, just as it would be a
23 violation of your sworn duty as judges of the facts to base
24 your verdict upon anything but the evidence received in the
25 case.

1 You were chosen as jurors for this trial in order to
2 evaluate all of the evidence received and to decide each of the
3 factual questions presented by the allegations brought by the
4 government in the indictment and the pleas of not guilty of the
5 defendant.

6 In deciding the issues presented to you for decision
7 in this trial, you must not be persuaded by bias, prejudice, or
8 sympathy for or against any of the parties to this case or by
9 any public opinion.

10 Justice through trial by jury depends upon the
11 willingness of each individual juror to seek the truth from the
12 same evidence presented to all of the jurors here in the
13 courtroom and to arrive at a verdict by applying the same rules
14 of law as are now being given to each of you in these
15 instructions.

16 During this trial, I permitted you to take notes. As
17 I advised you at the beginning of the trial, many courts do not
18 permit note taking by jurors. You are instructed that your
19 notes are only a tool to aid your own individual memory, and
20 you should not compare your notes with those of other jurors in
21 determining the content of any testimony or in evaluating the
22 importance of any evidence.

23 Moreover, you are 12 coequal judges of the facts.
24 The memory or opinions about the evidence of a juror who took
25 extensive notes is no more or less deserving of consideration

1 than the memory or opinions about the evidence held by a juror
2 who took few or no notes. Your notes are not evidence and are
3 by no means a complete outline of the proceedings or even a
4 list of the highlights of the trial. Above all, your memory
5 should be your greatest asset when it comes time to deliberate
6 and render a decision in this case.

7 Now, the evidence in this case consists of the sworn
8 testimony of the witnesses, regardless of who may have called
9 them, all exhibits received in evidence, regardless of who may
10 have produced them, and all stipulations of fact agreed to by
11 the parties.

12 Any proposed testimony or proposed exhibit to which
13 an objection was sustained by the Court and any testimony or
14 exhibit ordered stricken by the Court must be entirely
15 disregarded. Anything you may have seen or heard outside the
16 courtroom is not proper evidence and must be entirely
17 disregarded.

18 Questions of the lawyers are not evidence. Only a
19 witness's answer to a question is evidence. Objections,
20 statements, and arguments of counsel are not evidence in the
21 case.

22 You are to base your verdict only on the evidence
23 received during the trial. In your consideration of the
24 evidence received, however, you are not limited to the literal
25 statements of the witnesses or to the literal assertions in the

1 exhibits. In other words, you are not limited solely to what
2 you see and hear as the witnesses testify or as the exhibits
3 are admitted. Instead, you are permitted to draw from the
4 testimony and exhibits which you find reliable such reasonable
5 inferences as you find justified in the light of your
6 experience and common sense. Inferences are simply conclusions
7 which can reasonably be drawn from the evidence received during
8 the trial.

9 There is nothing particularly different in the way
10 that a juror should consider the evidence in a trial from that
11 in which any reasonable and careful person would treat any very
12 important question that must be resolved by examining facts,
13 opinions, and evidence. You are expected to use your good
14 sense in considering and evaluating the evidence in the case
15 for only those purposes for which it has been received and to
16 give such evidence a reasonable and fair construction in the
17 light of your common knowledge of the natural tendencies and
18 inclinations of human beings.

19 If any reference to a witness's testimony or the
20 exhibits either by the Court or by counsel does not coincide
21 with your own memory of the evidence, it is your memory of the
22 evidence which controls during your deliberations and not that
23 of the Court or of counsel.

24 It is the duty of the Court to admonish an attorney
25 who out of zeal for his or her cause does something which I

1 feel is not in keeping with the rules of evidence or procedure.
2 You are to draw absolutely no inference against the side to
3 whom an admonition of the Court may have been addressed during
4 the trial of this case.

5 And during the course of the trial, I occasionally
6 asked questions of a witness. Do not assume that I hold any
7 opinion on the matters to which my questions may relate. The
8 Court may ask a question simply to clarify a matter, not to
9 help one side of the case or hurt the other side.

10 It is the sworn duty of an attorney on each side of a
11 case to object when the other side offers testimony or exhibits
12 which that attorney believes is not entirely admissible -- or
13 properly admissible. Only by raising an objection can a lawyer
14 request and obtain a ruling from the Court on the admissibility
15 of the evidence being offered by the other side. You should
16 not be influenced against an attorney or the attorney's client
17 because the attorney has made objections.

18 Moreover, do not attempt to interpret my rulings on
19 objections as somehow indicating to you who I believe should
20 win or lose the case.

21 Now, I'm going to talk in these next set of
22 instructions a little bit about evidence. There are two types
23 of evidence which are generally presented during a trial --
24 direct evidence and circumstantial evidence. Direct evidence
25 is the testimony of a person who asserts or claims to have

1 actual knowledge of a fact, such as an eyewitness.

2 Circumstantial evidence is proof of a chain of facts and
3 circumstances indicating the existence of a fact.

4 And I have a standard example I always give to juries
5 about circumstantial evidence. You leave your home one morning
6 in, let's say it's February. It's been cold out, but your
7 front yard is bare. There's no snow on the ground. And you
8 leave, let's say, at 9:00 in the morning, and you come home at
9 1:00 in the afternoon.

10 Now, in the meantime, it has snowed, and when you
11 come home at 1:00, there's a white blanket of snow in your
12 front yard, and you see a footprint in that snow. You do not
13 see a person, but you see the facts -- you have the facts I've
14 just given you.

15 Now, you have direct evidence that it has snowed.
16 You know what time you left the house, you know what time
17 you've come back, you see the footprint, and you know from
18 ordinary human experience a human being normally is associated
19 with a footprint.

20 From those facts, you can draw the inference that
21 there was a person in your yard sometime between nine and one,
22 although you never saw the person. That's an example of
23 circumstantial evidence.

24 Now, the law makes absolutely no distinction between
25 the weight or value to be given to either direct or

1 circumstantial evidence, nor is a greater degree of certainty
2 required of circumstantial evidence than of direct evidence.
3 In other words, you should weigh all the evidence in the case
4 in reaching your verdict.

5 During this trial, documents have been entered into
6 evidence that have had words and phrases and sometimes entire
7 paragraphs redacted or deleted. In other instances, you have
8 seen that there have been words or phrases substituted for the
9 original words or phrases that may appear in a document.

10 I have decided to allow substitutions and redactions
11 in this fashion to protect national security interests. Many
12 of the substitutions and redactions pertain to names and
13 specific locations, and those specific names themselves are
14 simply not relevant to the issues at hand. Sometimes I have
15 permitted substitutions and redactions to protect sensitive and
16 highly classified matters, most of which have nothing to do
17 with this case.

18 I caution you that you should not consider the manner
19 in which substitutions and redactions have been used as an
20 expression of my opinion regarding the facts of this case. It
21 is your job and your job alone to decide the facts of this
22 case.

23 A number of the exhibits received in evidence contain
24 their original classification markings, such as Secret. Except
25 for Exhibits 142, 143, and 144, which I will address shortly,

1 all of these exhibits are now unclassified. These unclassified
2 exhibits are public, are public record documents and do not
3 require any special handling procedures.

4 Because Exhibits 142, 143, and 144 remain classified
5 as Secret, and you're going to know that because they have a
6 red cover on them when you see them in the jury room, you may
7 not communicate the contents of these exhibits to anyone after
8 this trial is concluded. You should draw no inference as to
9 the guilt or innocence of the defendant from the fact that you
10 cannot communicate anything about these exhibits.

11 Now, certain charts and summaries have been shown to
12 you in order to help explain the facts disclosed by the books,
13 records, and other documents which are in evidence in the case.
14 Such charts or summaries are not in and of themselves evidence
15 or proof of any facts. If such charts or summaries do not
16 correctly reflect the facts or figures shown by the evidence in
17 the case, you should disregard them.

18 In other words, such charts and summaries are used
19 only as a matter of convenience. So if, and to the extent that
20 you find they are not in truth summaries of facts or figures
21 shown by the evidence in the case, you are to disregard them
22 entirely.

23 The next group of instructions talk about witnesses
24 and how you go about approaching and evaluating witnesses, and
25 this next instruction also addresses evidence.

1 In evaluating the evidence, always consider the
2 quality of the evidence over the quantity. You are not bound
3 to decide any issue of fact in accordance with the testimony of
4 any number of witnesses which does not produce in your minds
5 belief in the likelihood of truth, as against the testimony of
6 a lesser number of witnesses or other evidence which does
7 produce such belief in your minds. In other words, the test is
8 not which side brings the greater number of witnesses or
9 presents the greater quantity of evidence but which witness and
10 which evidence appeals to your minds as being most accurate and
11 otherwise trustworthy.

12 The testimony of one witness or just a few witnesses
13 in whom you have complete confidence may outweigh the testimony
14 of several witnesses in whom you do not have such confidence.
15 Similarly, one or two exhibits which you find compelling may
16 outweigh numerous exhibits which you find less compelling. So
17 it is the quality of the evidence, not the quantity of the
18 evidence, that you should be concerned with.

19 Now, you as jurors are the sole and exclusive judges
20 of the credibility of each of the witnesses called to testify.
21 Only you determine -- excuse me -- only you determine the
22 importance or the weight that their testimony deserves. After
23 evaluating the credibility of a witness, you may decide to
24 believe all of that witness's testimony, only a portion of it,
25 or none of it at all.

1 In evaluating a witness's credibility, you should
2 carefully consider all of the testimony given, the
3 circumstances under which each witness has testified, and every
4 matter in evidence which tends to show whether a witness in
5 your opinion is worthy of belief. Consider each witness's
6 intelligence, motive to falsify, state of mind, and appearance
7 and manner while on the witness stand. Consider the witness's
8 ability to observe the matters as to which he or she has
9 testified, and consider whether the witness impresses you as
10 having an accurate memory or recollection of these matters.
11 Consider also any relation a witness may bear to either side of
12 the case, the manner in which each witness might be affected by
13 your verdict, and the extent to which, if at all, each witness
14 is either supported or contradicted by other evidence in the
15 case.

16 Inconsistencies or discrepancies in the testimony of
17 a witness or between the testimony of different witnesses may
18 or may not cause you to disbelieve or discredit such testimony.
19 Two or more persons witnessing an incident may simply see or
20 hear it differently. Innocent mistakes in remembering
21 something is not an uncommon human experience. In evaluating
22 the effect of a discrepancy, however, always consider whether
23 it pertains to a matter of importance or to an insignificant
24 detail, and consider whether the discrepancy results from
25 innocent error or from intentional falsehood.

1 After making your own judgment concerning the
2 believability of a witness, you can then attach such importance
3 or weight to that testimony, if any, that you feel it deserves.

4 The rules of evidence ordinarily do not permit
5 witnesses to testify as to opinions or conclusions. An
6 exception to this rule exists as to those whom we call expert
7 witnesses. Witnesses who by education and experience have
8 become expert in some art, science, profession, or calling may
9 state their opinions as to relevant and material matters in
10 which they profess to be expert and may also state their
11 reasons for the opinions.

12 You should consider each expert opinion received in
13 evidence and give it such weight as you think it deserves. If
14 you should decide that the opinion of an expert witness is not
15 based upon sufficient education and experience or if you should
16 conclude that the reason given in support of the opinion --
17 reasons given in support of the opinion are not sound, or if
18 you feel that it is outweighed by other evidence, you may
19 disregard the opinion entirely.

20 A witness may be discredited -- and the technical
21 term is "impeached" -- by contradictory evidence or by evidence
22 that at some other time, the witness has said or done something
23 or has failed to say or do something that is inconsistent with
24 the witness's present testimony.

25 If you believe any witness has been impeached and

1 thus discredited, it is your exclusive province to give the
2 testimony of that witness such credibility, if any, as you may
3 think it deserves.

4 If a witness is shown knowingly to have testified
5 falsely concerning any material matter, you have a right to
6 distrust such witness's testimony in other particulars, and you
7 may reject all the testimony of that witness or give it such
8 credibility as you may think it deserves.

9 An act or omission is knowingly done if voluntarily
10 and intentionally done and not done because of a mistake or
11 accident or other innocent reason.

12 Now, during the trial of this case, the testimony of
13 Mr. Merlin was presented to you by way of video deposition
14 which consisted of sworn recorded answers to questions asked of
15 the witness in advance of the trial by the attorneys for the
16 parties to the case. The testimony of a witness who for some
17 reason cannot be present to testify from the witness stand may
18 be presented through a video recording played on a television
19 set. Such testimony is entitled to the same consideration and
20 is to be judged as to credibility and weighed and otherwise
21 considered by the jury insofar as possible in the same way as
22 if the witness had been physically present in the courtroom and
23 had testified from the witness stand.

24 During this trial, you heard testimony from witnesses
25 who are currently employed by the Central Intelligence Agency.

1 You also heard testimony from former employees of the Central
2 Intelligence Agency, some of whom continue to work for the
3 agency as contractors, and you heard the testimony of Human
4 Asset No. 1 by video deposition and that of his wife. These
5 witnesses testified either by using only initials or using a
6 made-up name -- Merlin, that's a made-up name -- if you were
7 not told their true names. These witnesses also testified with
8 a screen preventing the general public from seeing them.

9 The disclosure of the witnesses' names and their
10 physical identity could potentially compromise either their
11 continued work for the CIA or expose them to safety issues.

12 As I have explained to you, one of your roles as
13 jurors will be to assess the credibility of each witness who
14 has testified during this trial. You should not make any
15 judgments about the credibility of those witnesses simply
16 because you do not know their full names or because they
17 testified with the screen. Moreover, you should not consider
18 the manner in which such witnesses testified as an expression
19 of my opinion as to any of the facts of this case. Again, it
20 is your job and your job alone to decide the facts of this
21 case.

22 The defendant in a criminal case has an absolute
23 right under our Constitution not to testify. The fact that the
24 defendant, Jeffrey Alexander Sterling, did not testify must not
25 be discussed or considered by the jury in any way when

1 deliberating and in arriving at your verdict. No inference of
2 any kind may be drawn from the fact that a defendant decided to
3 exercise his privilege under the Constitution and did not
4 testify.

5 As I stated earlier, the law never imposes upon a
6 defendant in a criminal case the burden or duty of calling any
7 witnesses or of producing any evidence.

8 Now, the next series of instructions are going to
9 talk about the indictment, which is the document used to bring
10 the charges, and then the specific charges involved in this
11 case, and we'll also be giving you some definitions of some of
12 the terms that are involved in those charges.

13 An indictment is a formal method used by the
14 government to accuse a person of a crime. It is not evidence
15 of any kind against a person. Mr. Sterling is presumed to be
16 innocent of the crimes charged. Even though the indictment has
17 been returned against Mr. Sterling, he begins this trial with
18 absolutely no evidence against him.

19 Mr. Sterling has pleaded not guilty to all the
20 charges in this indictment and therefore denies that he is
21 guilty of the charges.

22 A separate crime is alleged against the defendant in
23 each count of the indictment. Each alleged offense and any
24 evidence pertaining to it should be considered separately by
25 the jury. The fact that you find the defendant guilty or not

1 guilty of one of the offenses charged should not control your
2 verdict as to any other offense charged against the defendant.

3 In other words, you must give separate and individual
4 consideration to each charge against the defendant.

5 The indictment charges that the alleged offenses were
6 committed between on or about certain dates. Although it is
7 necessary for the government to prove beyond a reasonable doubt
8 that each offense was committed on a date reasonably near the
9 date or dates alleged in the specific count being considered,
10 it is not necessary for the government to prove that each
11 offense was committed precisely on the dates charged.

12 The defendant is not on trial for any act or any
13 conduct not specifically charged in the indictment.

14 Now, the government has introduced evidence that
15 defendant had classified documents, and these are Exhibits 142
16 through 145, in his custody when his residence was searched.
17 Evidence that an act was done by the defendant at some other
18 time is not, of course, any evidence or proof whatever that at
19 another time, the defendant performed a similar act, including
20 the offenses charged in this indictment.

21 Evidence of a similar act may not be considered by
22 the jury in determining whether the defendant actually
23 performed the physical acts charged in this indictment. Nor
24 may such evidence be considered for any other purpose
25 whatsoever unless the jury first finds beyond a reasonable

1 doubt from other evidence in the case standing alone that the
2 defendant did the acts charged in the indictment.

3 If the jury should find beyond a reasonable doubt
4 from other evidence in the case that the defendant did the act
5 or acts alleged in the particular count under consideration,
6 the jury may then consider evidence as to an alleged earlier
7 act of a like nature in determining the state of mind or intent
8 with which the defendant actually did the act or acts charged
9 in that particular count.

10 As previously stated, the defendant is not on trial
11 for any acts not alleged in the indictment. Nor may a
12 defendant be convicted of the crimes charged even if you were
13 to find that he committed other acts, even acts similar to the
14 one charged in this indictment.

15 Now, the defendant has been charged in the indictment
16 with knowingly and willfully communicating national defense
17 information to another not entitled to receive such information
18 while being in lawful possession of such information. Count 1
19 charges specifically that the defendant caused national defense
20 information, namely, information about Classified Program No. 1
21 and Human Asset No. 1, to be communicated, delivered, and
22 transmitted to any person of the general public not entitled to
23 receive this information, including foreign adversaries,
24 through the publication, distribution, and delivery of *State of*
25 *War* into the Eastern District of Virginia in approximately late

1 December and early January of 2006.

2 It's further alleged in Count 1 that the defendant
3 did so while having reason to believe that this national
4 defense information could be used to the injury of the United
5 States or to the advantage of any foreign nation.

6 Count 4 charges that the defendant communicated,
7 delivered, and transmitted national defense information,
8 namely, information about Classified Program No. 1 and Human
9 Asset No. 1, directly and indirectly to James Risen, a person
10 of the general public not entitled to receive this information,
11 between February 12 and April 30 of 2003. It's further alleged
12 that the defendant did so while having reason to believe that
13 this national defense information could be used to the injury
14 of the United States or to the advantage of any foreign nation.

15 Finally, Count 6 charges that the defendant attempted
16 to communicate, deliver, and transmit national defense
17 information, namely, information about Classified Program No. 1
18 and Human Asset No. 1, to any person of the general public not
19 entitled to receive this information, including foreign
20 adversaries, through the publication, distribution, and
21 delivery of a *New York Times* article in the Eastern District of
22 Virginia between February 27, 2003, and April 30, 2003. And
23 it's further alleged that the defendant did so while having
24 reason to believe that this national defense information could
25 be used to the injury of the United States or to the advantage

1 of any foreign nation.

2 Now, the statute defining the offenses charged -- the
3 offense charged in Counts 1, 4, and 6 is Title 18 of the United
4 States Code, Section 793(d), and that code provides in part:

5 Whoever, lawfully having possession of, access to,
6 control over, or being entrusted with any document,
7 writing, . . ., or note relating to the national defense, or
8 information relating to the national defense which information
9 the possessor has reason to believe could be used to the injury
10 of the United States or to the advantage of any foreign nation,
11 willfully communicates, delivers, transmits, or causes to be
12 communicated, delivered, or transmitted . . . the same to any
13 person not entitled to receive it . . . shall be guilty of an
14 offense against the United States.

15 The defendant -- and I'm going to now talk about
16 Counts 2, 5, and 7. The defendant has been charged in the
17 indictment with knowingly and willfully disclosing -- I'm
18 sorry, communicating national defense information to another
19 not entitled to receive said information while not being in
20 lawful possession of this information.

21 Count 2 charges that the defendant caused national
22 defense information, namely, a letter relating to Classified
23 Program No. 1, to be communicated, delivered, and transmitted
24 to any person of the general public not entitled to receive
25 this information, including foreign adversaries, through the

1 publication, distribution, and delivery of *State of War* into
2 the Eastern District of Virginia in approximately late December
3 and early January 2006. The defendant did so while having
4 reason to believe that this national defense information -- I'm
5 sorry, it's alleged that the defendant did so while having
6 reason to believe that this national defense information could
7 be used to the injury of the United States or to the advantage
8 of any foreign nation.

9 Count 5 charges that the defendant communicated,
10 delivered, and transmitted national defense information,
11 namely, a letter relating to Classified Program No. 1, directly
12 and indirectly to James Risen, a person of the general public
13 not entitled to receive this information, between February 12,
14 2003, and April 30, 2003. And it's further alleged that the
15 defendant did so while having reason to believe that this
16 national defense information could be used to the injury of the
17 United States or to the advantage of any foreign nation.

18 Finally, Count 7 charges that the defendant attempted
19 to communicate, deliver, and transmit national defense
20 information, namely, a letter about Classified Program No. 1,
21 to any person of the general public not entitled to receive
22 this information, including foreign adversaries, through the
23 publication, distribution, and delivery of a *New York Times*
24 article in the Eastern District of Virginia between February 27
25 and April 30 of 2003. And it's further alleged that the

1 defendant did so while having reason to believe that this
2 national defense information could be used to the injury of the
3 United States or to the advantage of any foreign nation.

4 Now, Counts 2, 5, and 7 involve a different
5 subsection of Section 793 of Title 18 of the United States
6 Code, and (e) provides in relevant part that: Whoever,
7 unlawfully having possession of, access to, control over, or
8 being entrusted with any document, writing, . . . , or note
9 relating to the national defense, or information relating to
10 the national defense which information the possessor has reason
11 to believe could be used to the injury of the United States or
12 to the advantage of any foreign nation, willfully communicates,
13 delivers, transmits, or causes to be communicated, delivered,
14 or transmitted . . . the same to any person not entitled to
15 receive it . . . shall be guilty of an offense against the
16 United States.

17 Now, every crime has what are called elements. These
18 are actually the essential components of that crime, and in a
19 criminal case, in order for a person to be found guilty of a
20 particular crime, the government must produce enough evidence
21 to establish each and every element beyond a reasonable doubt.
22 So if you have a crime with four elements and you're satisfied
23 the government has proven three of those four elements beyond a
24 reasonable doubt but not the fourth element, the government has
25 not met its burden, and you would have to acquit the defendant

1 for that particular count.

2 So in order to meet its burden of proof on Counts 1,
3 2, and 4 through 7, that is, the counts I've just summarized
4 for you, the government must prove beyond a reasonable doubt
5 the following elements:

6 First, for Counts 1, 4, and 6, that the defendant
7 lawfully had possession of, access to, control over, or was
8 entrusted with intangible or oral information relating to the
9 national defense.

10 For Counts 2, 5, and 7, the first element is that the
11 defendant had unauthorized possession of, access to, control
12 over, or was entrusted with a document, writing, or note
13 relating to the national defense.

14 So the first element is different for Counts 1, 4,
15 and 6. It's one first element. There's a different first
16 element for Counts 2, 5, and 7. But the second, third, and
17 fourth elements for these offenses are the same.

18 The second element -- this applies then to all of
19 those counts -- is that the defendant had reason to believe
20 that this national defense information could be used to the
21 injury of the United States or to the advantage of any foreign
22 nation.

23 The third element that's common to all of those
24 counts is that the defendant willfully communicated, delivered,
25 transmitted, or caused to be communicated, delivered, or

1 transmitted this national defense information.

2 And the fourth element common to all of those counts
3 is that the defendant did so to a person not entitled to
4 receive it. A person is not entitled to receive classified
5 information if he did not hold a security clearance or if he
6 holds a security clearance but has no need to know the
7 information.

8 Now, the word "possess" means to own or to exert
9 control over something. The word "possession" can take on
10 several different but related meanings.

11 The law recognizes two kinds of possession -- actual
12 possession and constructive possession. A person who knowingly
13 has direct physical control over a thing at a given time is in
14 actual possession of it. The example is I'm holding this blue
15 pen in my hand. I have actual, physical possession of this
16 blue pen.

17 Now, a person who although not in actual possession,
18 knowingly has both the power and intention at a given time to
19 exercise dominion or control over a thing, either directly or
20 through another person or persons, is said to have constructive
21 possession of it. My courtroom deputy, Ms. Guyton, sitting
22 right here, works for me. She's got the computer. If I direct
23 her to send an e-mail message to my secretary, I at that time
24 have constructive possession of that computer because I'm in
25 the position to control how it's being used.

1 Now, you may find that the element of possession as
2 that term is used in these instructions is present if you find
3 beyond a reasonable doubt that the defendant had actual or
4 constructive possession of the thing at issue.

5 For Counts 1, 4, and 6, I'm now going to define two
6 key terms: "lawful possession" and "unlawful possession,"
7 because that's what differentiates that first element for these
8 counts. So for Counts 1, 4, and 6, a person has lawful
9 possession of something if he is entitled to have it. In this
10 case, lawful possession of classified information means
11 possession of classified information by a person who held an
12 appropriate security clearance and had a need to know at the
13 time the person acquired the classified information.

14 For Counts 2, 5, and 7, a person has unauthorized
15 possession of something if he is not entitled to have it. In
16 this case, unauthorized possession of classified information,
17 namely, a letter related to Classified Program No. 1, means
18 possession of classified information by a person who does not
19 hold a security clearance or by a person who holds a security
20 clearance without the need to know, or by a person who holds a
21 security clearance, has a need to know, but removed the
22 classified information from the official premise without
23 authorization.

24 The term "need to know" means a determination made by
25 an authorized holder of classified information that a

1 prospective recipient requires access to specific classified
2 information in order to perform or assist in a lawful and
3 authorized government function.

4 For those first six counts, that is, for Counts 1, 2,
5 and 4 through 7, the term "information relating to the national
6 defense" broadly refers to all matters that directly or may
7 reasonably be connected with the national defense of the United
8 States against any of its enemies, including matters relating
9 to the nation's intelligence capabilities.

10 The term "national defense" is a generic concept of
11 broad connotation referring not only to military, naval, and
12 air establishments, but also to all related activities of
13 national defense preparedness. National defense information
14 can be oral or intangible information.

15 To prove that documents, writings, or intangible
16 information relate to the national defense, there are two
17 things that the government must prove. First, it must prove
18 that the disclosure of the material would be potentially
19 damaging to the United States or might be useful to an enemy of
20 the United States. Second, it must prove that the material is
21 closely held by the United States government.

22 The disclosure of the information relating to the
23 national defense need not cause actual damage or harm to the
24 United States. Instead, potential damage or harm to the United
25 States is sufficient to establish this prong of the essential

1 element.

2 In determining whether material is closely held, you
3 may consider whether it has been classified by appropriate
4 authorities and whether it remained classified on the date or
5 dates pertinent to the indictment. Where the indictment has
6 been made public by the United -- I'm sorry, where the
7 information has been made public by the United States
8 government and is found in sources lawfully available to the
9 general public, it does not relate to the national defense.
10 Similarly, where the sources of information are lawfully
11 available to the public and the United States government has
12 made no effort to guard such information, the information
13 itself does not relate to the national defense.

14 In deciding this issue, you should examine the
15 information and also consider the testimony of witnesses who
16 testified as to the content and significance of the information
17 and who described the purpose and the use to which the
18 information contained therein could be put.

19 During the trial, you may have heard the attorneys
20 refer to certain evidence or materials as classified
21 information or that certain information was classified.
22 Classified information is information that has been determined
23 pursuant to a system established by the Executive Branch to
24 require protection against unauthorized disclosure.

25 As I have previously instructed you, when considering

1 Counts 1, 2, and 4 through 7, you are to determine whether
2 certain information in this case was national defense
3 information. That is not the same as classified information.
4 However, you may consider the fact that information was
5 classified in determining whether the information at issue was
6 national defense information.

7 For Counts 1, 2, and 4 through 7, the phrase "with
8 reason to believe that it could be used to the injury of the
9 United States or to the advantage of a foreign nation" means
10 that the defendant knew facts from which he concluded or
11 reasonably should have concluded that the documents, writings,
12 or intangible information relating to the national defense
13 could be used for the prohibited purposes. In considering
14 whether or not the defendant acted with the intent or having
15 reason to believe that the material could be used to the injury
16 of the United States or to the advantage of a foreign country,
17 you may consider the nature of the documents or information
18 involved.

19 The government does not have to prove that the
20 documents or information could be used both to injure the
21 United States and to the advantage of a foreign country. The
22 statute reads in the alternative, so proof of either will
23 suffice.

24 If a defendant willfully causes an act to be done by
25 another, the defendant is responsible for those acts as though

1 he personally committed them. To establish that the defendant
2 caused an act to be done, the government must prove beyond a
3 reasonable doubt:

4 First, that another person performed the acts that
5 constituted the crime of unauthorized communication of national
6 defense information or committed an indispensable element of
7 that crime; and

8 Two, that the defendant willfully caused these acts
9 even though he did not personally commit these acts.

10 The government need not prove that the person who
11 performed the acts that constituted the crime of unauthorized
12 communication of national defense information did so with
13 criminal intent. That person may be an innocent intermediary
14 or pawn.

15 The defendant need not perform acts that constitute
16 the crime of unauthorized communication of national defense
17 information, be present when it was performed, or be aware of
18 the details of its execution to be guilty of causing an act to
19 be done by another. However, a general suspicion that a lawful
20 act may occur or that something criminal is happening is not
21 enough. Mere knowledge that the unauthorized communication of
22 national defense information is being committed without more is
23 also not sufficient to establish causing an act to be done
24 through another.

25 As I have instructed you, an act is done willfully if

1 done voluntarily and intentionally with the intent that
2 something the law forbids be done, that is to say, with bad
3 purpose, either to disobey or disregard the law.

4 For Counts 1, 2, and 4 through 7, an act is done
5 willfully -- and I'm just going to repeat this because it comes
6 through all the instructions -- if it is done voluntarily and
7 intentionally and with the specific intent to do something the
8 law forbids, that is, with a purpose to disobey the law.

9 Now, for Counts 1, 2, and 4 through 7, the government
10 must prove beyond a reasonable doubt each and every element of
11 these offenses as I have explained them to you. The
12 government, however, does not have to prove that the defendant
13 was the only person who communicated the national defense
14 information alleged in the indictment. Your duty as jurors is
15 limited to determining whether the government has proved beyond
16 a reasonable doubt that the defendant committed the offenses
17 charged, irrespective of whether other persons may have
18 communicated the same or similar information.

19 Now, we're moving on to Count 3. The defendant has
20 been charged in Count 3 of the indictment with knowingly and
21 willfully retaining national defense information while having
22 unauthorized possession of that information.

23 Count 3 charges specifically that the defendant
24 unlawfully retained a document relating to the national
25 defense, namely, a letter relating to Classified Program No. 1,

1 at his residence beginning in or about January 31, 2002, and
2 continuing through approximately April 30 of 2003.

3 The statute, and this is another section of 793 -- of
4 Title 18, United States Code, 793(a) -- (e), 793(e), provides
5 that: Whoever having unauthorized possession of . . . any
6 document . . . relating to the national defense . . . willfully
7 retains the same and fails to deliver it to the office or
8 employee of the United States entitled to receive it . . .
9 shall be guilty of an offense against the United States.

10 And for this offense, for Count 3, there are two
11 essential elements:

12 First, that beginning in or about January 31 of
13 2012 -- that's 2002; that's a typo -- and continuing thereafter
14 through on or about April 20 of 2003, the defendant had
15 unauthorized possession or control over a document relating to
16 the national defense of the United States; and

17 Two, that the defendant willfully retained the same
18 document and failed to deliver the document to an officer or an
19 employee of the United States who was entitled to receive it.

20 The first element the government must prove for this
21 defense is that the defendant had unauthorized possession of or
22 control over information that relates to the national defense.
23 The definitions I previously provided you with respect to
24 unauthorized possession and information relating to the
25 national defense apply equally to this count.

1 The second element the government must prove beyond a
2 reasonable doubt is that the defendant willfully retained the
3 document in question and failed to deliver it to an officer or
4 employee of the United States authorized to receive the
5 document.

6 As I've instructed you already, an act is done
7 willfully if it is done voluntarily and intentionally and with
8 the specific intent to do something the law forbids, that is,
9 with a bad purpose either to disobey or disregard the law.
10 Unlike the intent element for Counts 1, 2, and 4 through 7, for
11 Count 3, the government does not have to prove that the
12 defendant acted with the intent or reason to believe that his
13 retention of the document could be used to the injury of the
14 United States or to the advantage of any foreign nation.
15 Instead, the government only must prove that the defendant
16 acted willfully as defined above.

17 Now, Count 9 of the indictment charges that between
18 on or about December 24, 2005, and on or about January 5, 2006,
19 the defendant caused to be conveyed without authority property
20 of the United States, namely, classified information about
21 Classified Program No. 1, which had a value of more than
22 \$1,000, and came into the defendant's possession by virtue of
23 his employment with the Central Intelligence Agency, to any
24 member of the general public not entitled to receive said
25 information, including foreign adversaries, through the

1 publication, distribution, and delivery of the *State of War* for
2 retail sale in the Eastern District of Virginia.

3 Title 18 of the United States Code, Section 641,
4 provides: Whoever . . . without authority sells, conveys, or
5 disposes of any record, voucher, money, or thing of value of
6 the United States or of any department or agency thereof, or
7 any property made or being made under control for the United
8 States or any department or agency thereof . . . shall be
9 guilty of an offense against the United States.

10 And there are four essential elements for this
11 offense. Again, the government must prove each and every one
12 of these beyond a reasonable doubt:

13 First, that the defendant conveyed a thing of value
14 of the United States;

15 Second, that the defendant did not have the legal
16 authority to do so;

17 Third, that the thing of value referred to in the
18 indictment was of a value greater than \$1,000; and

19 Four, that the defendant acted knowingly.

20 The word "convey" means to transfer or deliver or
21 caused to be transferred or delivered to another. The
22 term "without authority" means without actual permission from
23 someone who has the legal capacity to give permission.

24 The term "value" can mean face value, par value,
25 market value, or cost price, either wholesale or retail,

1 whichever is greater. A thing of value can be any thing,
2 including oral information or intangible property, that has
3 value.

4 An individual acts knowingly if he was conscious and
5 aware of his actions, realized what he was doing or what was
6 happening around him, and did not act because of ignorance,
7 mistake, or accident. Thus, if the defendant acted in good
8 faith, he cannot be guilty of the crime. The burden to prove
9 intent, as with all other elements of the crime, rests with the
10 government.

11 Intent or knowledge may not ordinarily be proven
12 directly because there's no way of directly scrutinizing the
13 workings of the human mind. In determining what the defendant
14 knew or intended at a particular time, you may consider any
15 statements made or acts done or omitted by the defendant and
16 all other facts and circumstances received in evidence that may
17 aid in your determination of the defendant's knowledge or
18 intent. You may infer, but you certainly are not required to
19 infer, that a person intends the natural and probable
20 consequences of acts knowingly done or knowingly omitted. It
21 is entirely up to you, however, to decide what facts are proven
22 by the evidence received during this trial.

23 Intent and motive are different concepts and should
24 not be confused. Motive is what prompts a person to act or
25 fail to act. Intent refers only to the state of mind with

1 which the act is done or omitted.

2 Good motive alone is never a defense where the act
3 done or omitted is a crime. The motive of the defendant is
4 therefore immaterial except insofar as evidence of motive may
5 aid in the determination of state of mind or the intent of the
6 defendant.

7 This is now the last count that you have to consider:
8 Count 10 of the indictment charges that the defendant knowingly
9 and corruptly destroyed the March 10, 2003, e-mail from himself
10 to James Risen that had a link to a CNN article about the
11 Iranian nuclear weapons program. The defendant is alleged to
12 have deleted this e-mail from his e-mail account with the
13 intent to impair the e-mail's integrity and availability for
14 use in an investigation before a federal grand jury empaneled
15 in the Eastern District of Virginia between approximately April
16 18, 2006, and July 28, 2006.

17 Title 10 involves a violation of section 1512(c) of
18 Title 18 of the United States Code, which provides in part:
19 Whoever corruptly alters, destroys, mutilates, or conceals a
20 record, document, or other object, or attempts to do so with
21 the intent to impair the object's integrity or availability for
22 use in an official proceeding; or otherwise obstructs,
23 influences, or impedes any official proceeding, or attempts to
24 do so, shall be guilty of an offense against the United States.

25 There are three essential elements, again, all of

1 which must be proven beyond a reasonable doubt in order for
2 there to be a conviction on Count 10.

3 First is that the defendant altered, destroyed,
4 mutilated, or concealed a record, document, or other object, or
5 attempted to do so, or otherwise obstructed, influenced, or
6 impeded an official proceeding;

7 Two, that the defendant did so with the intent to
8 impair the object's integrity or availability for use in an
9 official proceeding; and

10 Third, that the defendant did so corruptly.

11 The document destroyed need not, need not be material
12 to the official proceeding.

13 An "official proceeding" means any proceeding,
14 including an investigation before a federal grand jury.

15 To act "corruptly" as that word is used in these
16 instructions means to act voluntarily and deliberately and for
17 the purpose of improperly influencing, or improperly
18 obstructing, or improperly interfering with the administration
19 of justice. The defendant's conduct must have the natural and
20 probable effect of interfering with the due administration of
21 justice. The government, however, does not have to prove that
22 the act of obstruction in fact obstructed the official
23 proceeding or was successful.

24 In addition to the elements of the specific charges
25 which the government must prove beyond a reasonable doubt, as

1 to each charge, the government must also establish the venue of
2 that charge in the Eastern District of Virginia because a
3 defendant has a right to be tried in the district where the
4 offense was committed.

5 Although, although the government has the burden to
6 prove venue, it is not required to prove venue beyond a
7 reasonable doubt. Rather, the government must establish venue
8 by a preponderance of the evidence, which is a lower standard
9 of proof and requires that it is more likely than not that at
10 least one act in furtherance of that offense occurred in the
11 Eastern District of Virginia. The government must establish
12 venue as to each charged offense.

13 If the government fails to establish venue for a
14 particular charge, the jury must acquit the defendant of that
15 charge.

16 I instruct you that you must presume the defendant to
17 be innocent of the crimes charged. Thus, the defendant,
18 although accused of crimes in the indictment, begins the trial
19 with a clean slate, that is, with no evidence against him. The
20 indictment, as you already know, is not evidence of any kind.
21 The defendant is, of course, not on trial for any act or crime
22 not contained in the indictment. The law permits nothing but
23 legal evidence presented before the jury in court to be
24 considered in support of any charge against the defendant, and
25 the presumption of innocence alone therefore is sufficient to

1 acquit the defendant.

2 The burden is always upon the prosecution to prove
3 guilt beyond a reasonable doubt. That burden never shifts to
4 the defendant for the law never imposes upon a defendant in a
5 criminal case the burden or duty of calling any witnesses or
6 producing any evidence. The defendant is not even obligated to
7 produce any evidence by cross-examining the witnesses for the
8 government.

9 It is not required that the government prove guilt
10 beyond all possible doubt. The test is one of reasonable
11 doubt. And I can't give you a definition for that term. Those
12 are not technical legal terms. English language.

13 Unless the government proves beyond a reasonable
14 doubt that the defendant has committed each and every element
15 of the offenses charged in the indictment, you must find the
16 defendant not guilty of the offenses. If the jury views the
17 evidence in the case as reasonably permitting either of two
18 conclusions, one of innocence and one of guilt, the jury must,
19 of course, adopt the conclusion of innocence.

20 Now, this is the last instruction, and I know you've
21 been with this for almost an hour. Upon retiring to the jury
22 room to begin your deliberations, you will elect one of your
23 members to act as your foreperson. The foreperson will preside
24 over your deliberations, will be your spokesperson here in
25 court, and will sign the verdict form on your behalf.

1 Your verdict must represent the collective judgment
2 of the jury. In order to return a verdict, it is necessary
3 that each juror agree to it. That is what unanimity means. In
4 other words, your verdict must be unanimous.

5 It is your duty as jurors to consult with one another
6 and to deliberate with one another with a view towards reaching
7 an agreement if you can do so without violence to your
8 individual judgment. Each of you must decide the case for
9 yourself, but do so only after an impartial consideration of
10 all the evidence in the case with all the other jurors. In the
11 course of your deliberations, do not hesitate to reexamine your
12 own views and to change your opinion if convinced it is
13 erroneous. Do not surrender your honest conviction, however,
14 solely because of the opinion of the other jurors or for the
15 mere purpose of returning a verdict.

16 Remember at all times you are not partisans. You
17 don't represent the government; you don't represent the
18 defendant. Instead, you are judges, specifically, judges of
19 the facts of this case. And your sole interest is to seek the
20 truth from the evidence received during the trial.

21 Your verdict must be based solely upon the evidence
22 received in the case. Nothing you have seen or read outside of
23 court may be considered. Nothing that I have said or done
24 during the course of this trial is intended in any way to
25 somehow suggest to you what I think your verdict should be.

1 The punishment provided by law for the offenses
2 charged in the indictment is a matter exclusively within the
3 province of the Court and should never be considered by the
4 jury in any way in arriving at an impartial verdict as to the
5 offenses charged.

6 Nothing said in these instructions and nothing in the
7 verdict form prepared for your convenience is to suggest or
8 convey to you in any way or manner any intimation as to what
9 verdict I think you should return. What the verdict shall be
10 is the exclusive duty and responsibility of the jury. As I've
11 told you many times before, you are the sole judges of the
12 facts.

13 Now, a verdict form has been prepared for your
14 convenience, and you will notice that it skips from Count 7 to
15 Count 9. There is no Count 8 at issue in this case, so don't
16 worry about the missed number.

17 You will take this verdict form to the jury room, and
18 when you have reached your unanimous agreement as to your
19 verdict, the foreperson will write your verdict, date and sign
20 the form, and return with your verdict to the courtroom.

21 Let me go over the verdict form with you right now.
22 So it begins with the caption of the case, United States of
23 America v. Jeffrey Alexander Sterling, and it has the case
24 number, and then we've listed each count.

25 Count 1 -- and you can go back to the jury

1 instructions and find exactly what that count is referring to.
2 And it just says: "With respect to Count 1, unauthorized
3 disclosure of national defense information," and then it has
4 the code section, "we, the jury, unanimously find the
5 defendant, Jeffrey Alexander Sterling," and there are two
6 choices: Guilty/Not Guilty. "G" comes before "N," so the fact
7 that Guilty is listed first in no respect suggests that that
8 should be your answer, but we have to put the thing someplace,
9 and alphabetical seems as easy as any other way of doing it.

10 And then we go through each count that way, so then
11 there's a separate line for Count 2. Each one of these counts
12 gets an individual evaluation and individual decision, and
13 again, any decision as to any count must be unanimous.

14 At the very end then, the foreperson will date the
15 verdict form with the date the decision, the final decision is
16 made. We'll ask the foreperson to sign his or her name and
17 then please print it underneath since we often can't read your
18 signatures.

19 Now, you will take this verdict form into the jury
20 room. You will also have all of the physical exhibits that
21 were entered into evidence, and I asked the attorneys to
22 provide you with an index of those, so you'll have the exhibit
23 number and a little title of what the exhibit is to help you
24 find them because you have a lot of evidence in this case.

25 I will also, I have to correct a few typos, but I

1 will have for you a couple of copies of these written jury
2 instructions as well so you can refresh yourselves as to any
3 matter that we've talked about in these instructions. You may
4 take your notebooks with you as well.

5 If it becomes necessary during your deliberations to
6 communicate with the Court, you may send a note signed and
7 dated by your foreperson or by any of the other members of the
8 jury, and you do that by knocking on the door and giving the
9 note folded over to Mr. Wood, my court security officer. Of
10 course, he is forbidden to communicate in any way or manner
11 with any member of the jury on any subject touching the merits
12 of the case.

13 No member of the jury should ever attempt to
14 communicate with the Court by any means other than a signed
15 writing, and the Court will never communicate with any member
16 of the jury on any subject touching the merits of the case
17 other than via writing or orally here in court.

18 Also, please bear in mind that you are never to
19 reveal to any person, not even the Court, how the jury stands
20 numerically or otherwise on any issue until after you've
21 reached the unanimous verdict.

22 All right, counsel, approach the bench.

23 (Bench conference on the record.)

24 THE COURT: All right, you may have noticed as I read
25 I'm going to switch the word "communicate" on two of those

1 instructions. That's how I read them. They're just typed
2 wrong, okay, for those counts. Because we were using the word
3 "communicate" rather than "disclose."

4 MR. OLSHAN: That's fine.

5 THE COURT: Any objection from the government to the
6 charge that's just been given to the jury?

7 MR. OLSHAN: No, Your Honor.

8 MR. TRUMP: No.

9 THE COURT: Are there any changes, corrections,
10 anything you want the Court to change?

11 MR. OLSHAN: No.

12 THE COURT: No?

13 How about the defense? Other than the objections
14 you've already put on the record, are there any additional
15 objections to the charge other than what you've already
16 objected to?

17 MR. MAC MAHON: No, Your Honor.

18 THE COURT: Are there any additional things you want
19 me to tell the jury?

20 MR. MAC MAHON: No, Your Honor.

21 THE COURT: We're set to go then, right?

22 MR. MAC MAHON: We have to get rid of two jurors.

23 THE COURT: I know. We have to do the alternates.
24 That's the next thing, okay. The practice here is that
25 Ms. Guyton should have all 14 jurors' names in the box. Are

1 you ready to do it?

2 Is everyone watching? All right.

3 No, you do it.

4 All right, who is that? All right, the first one is
5 David Harrison, Juror No. 42, all right? So he's the alternate
6 No. 1. And the second one is Suzanne Yerks, Juror No. 101.
7 She's No. 2. All right?

8 Why don't you go back, and I'll excuse them.

9 MR. MAC MAHON: Thank you, Your Honor.

10 (End of bench conference.)

11 THE COURT: Now, ladies and gentlemen, I know you've
12 been a very smart and attentive jury, and I bet at least one of
13 you has been wondering, There are 14 of us, but juries are only
14 made up of 12 people. It turns out two of you have been
15 selected to be alternates, and, Mr. Harrison, you're alternate
16 No. 1; Ms. Yerks, you are alternate No. 2.

17 Where's Ms. Yerks?

18 (Juror Yerks raised hand.)

19 THE COURT: I want to first of all tell you folks we
20 really appreciate the time you've spent listening to this case.
21 Now, your job is not over yet. You will not be able to
22 deliberate with the 12 people who remain in the jury. We have
23 to have alternates because should any of you have had a family
24 emergency or, you know, get sick, the flu is around, and would
25 have been unable to come to the courthouse, we have to have 12

1 jurors in a criminal case. We would have had enough extra
2 people here to make sure we could get this case finished, but
3 at this point, I can't have more than 12 people in the jury
4 room.

5 If, however, during the course of the deliberations a
6 juror should get ill or for some reason before the jury is
7 finished we lose somebody, then, Mr. Harrison, we would call
8 you to come back in. And, Ms. Yerks, if we lost two jurors,
9 then we'd have to call you back in.

10 Therefore, it's extremely important, and I know this
11 is terribly unfair, but I have to keep you under the same
12 caution: You must still continue to avoid any publicity about
13 this case. It was discussed on the first page of *The*
14 *Washington Post* this morning, so stay away from the paper or at
15 least go to the sports section. Do not discuss this case.

16 The 12 of you can't e-mail or send any notes or have
17 any communication with your two former colleagues.

18 If you will leave your phone numbers with Ms. Guyton,
19 we will call you so that you know either that we need you back
20 here or the case is over so that you can then read the paper,
21 and other than anything you might remember about those three
22 classified exhibits, there's nothing that prohibits you from
23 talking about this case, although again, you may want to
24 respect the thoughts of your fellow jurors and not.

25 But at this point, we're going to let Mr. Harrison

1 and Ms. Yerks go. Leave your notebooks here. We'll keep them
2 so that should you have to come back and deliberate -- and as I
3 said, do leave us a note with your phone number on it, okay?
4 And I think we can let you folks go right now, all right?
5 Thank you. We'll stay in session for another minute.

6 You should check out with the Clerk's Office,
7 Ms. Yerks and Mr. Harrison. Let them know that you are
8 alternates so that you're not going to be coming back unless we
9 have to call you back, and just leave your phone numbers,
10 unless we already have them.

11 Is there a problem?

12 (Discussion off the record between the Court and the
13 Court Security Officer.)

14 THE COURT: All right. Well, you're going to get a
15 break now anyway, so what we'll do is this: We're going to
16 give you your afternoon break. What I would like you to do,
17 once the two alternates have left, so you need to step outside
18 while this is being done, the 12 of you decide who wants to be
19 the foreperson, all right? And then if the foreperson could
20 let me know in a written note how long a break you want to
21 take, all right? During that time, Ms. Yerks can retrieve her
22 cell phone from the car of one of the rest of you, all right?

23 And then you might want to decide how long you want
24 to deliberate today. There's -- once a jury starts
25 deliberating, the schedule can change dramatically. If you

1 want to stay past 5:30, that's fine. If you're going to stay
2 much later than that, I need to know so I can keep some heat on
3 in the room for you. If you want to stop at 5:30, which has
4 been our normal time, that's also fine.

5 You should know also that if you have a question, I
6 can't answer your question without running it by the attorneys,
7 and so I require at least one lawyer per side to always stay in
8 my courtroom. That does mean, however, that if you are going
9 to be on a break, I can let those lawyers leave the courtroom
10 for that time period.

11 So anytime you take a lunch break or a coffee break,
12 I want you to let me know, you know: We're breaking at this
13 time for 15 minutes, and that way I'll let everybody go so that
14 we don't waste your time. If you have a question and I have to
15 track lawyers down, you know, you might wait a half an hour for
16 an answer, and we don't want to do that, all right?

17 You also might want to think about what time you want
18 to start tomorrow morning. As I told you, I have other matters
19 unrelated to this case in my courtroom. You'll be my first
20 priority, but the point is you can start at 9:00, you can start
21 at 8:30, frankly, whenever you want to start, but you can't
22 start until you're all together.

23 Jury deliberation is a collaborative process, and it
24 means that each of you must be listening to the other
25 discussing the evidence, so if someone's in the restroom, you

1 should stop deliberating. If someone's run downstairs to get a
2 coffee, you've got to stop deliberating because it's important
3 that you hear each other, all right?

4 All right, we're going to let the jury go now, and if
5 you'd let us know who's going to be the foreperson, how long a
6 break you want, that will be just fine.

7 We'll recess court.

8 (Recess from 2:46 p.m., until 4:22 p.m.)

9 * * * * *

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11 CERTIFICATE OF THE REPORTER

12 I certify that the foregoing is a correct excerpt of the
13 record of proceedings in the above-entitled matter.

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/s/

Anneliese J. Thomson

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